

# NAEB

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### Proposed Changes In Copyright Law - Cause for Concern

At various regional meetings I have reported on the possible onerous changes contemplated in the Copyright Law; it is time now to provide you with a fuller report and indicate the extent of the impact the proposed amendments would have upon educational broadcasting.

### Current Developments

The present Copyright Law was enacted in 1909 and is out-of-date in respect to changes in technology, business practices, and judicial interpretations. In 1955 Congress authorized studies leading to general revision of the Copyright Law. In 1961 the Register of Copyrights submitted a list of tentative recommendations.

During the past year the Copyright Office has held several panel meetings to discuss these recommendations (in which NEIRC and NAEB participated) and four or five more such meetings are yet to be held. Following the panels, the Copyright Office will complete a proposed bill in early '64. Consequently, little time remains in which to influence the Register of Copyrights so that provisions in the final draft serve the best interests of educational broadcasting.

### Specific Problem

Under present law, anyone may give a public performance of a copyrighted non-dramatic literary or musical work, without the copyright owner's consent, if such a performance is not "for profit"; thus, educational broadcasters may use copyrighted historical, poetical, and musical materials, so long as the material is not dramatized and such use is non-profit.

In the proposed draft bill submitted by the Register in February 1963, there are alternatives proposed:

1. Alternative A would retain the present "for profit" limitation.
2. Alternative B would wipe out the "for profit" limitation and prohibit any performance of any copyrighted literary or musical work, without the copyright owner's consent, except for three exceptions, including performance of a copyrighted work by an instructor or pupil in the course of normal teaching activities, and performance of the work without expectation of commercial advantage and without any payment of the performers for services.

The Copyright Office explicitly stated that the purpose of Alternative B was to deny ETV any free use of non-dramatic literary and musical copyright material now available under present law.

Vigorous opposition to Alternative A (retaining the "for profit" limitation) has been registered by music and book publishers groups.

Although the present and proposed law provide certain exclusive rights to the copyright owner by enabling him to refuse anyone the right to make and publish copies and to print, reprint, publish and vend copyright material, the courts have evolved an implied limitation on such exclusive rights through the doctrine of "fair use". There is nothing in the statutes about "fair use", but the doctrine evolved by the courts means that copyrighted material may be used to a limited extent where such use is for a reasonable purpose which is noncompetitive with the copyright owner's market.

However, there is much uncertainty about this area and no one can be certain of his legal rights to use copyright material under "fair use". There is no statement of the number of words, lines, or notes that can be used without permission and mere acknowledgment of source does not avoid infringement.

"Fair use" is obviously of importance to educational broadcasters with their need to use excerpts from copyright material for instructional, expository, and illustrative purposes. But the uncertain application of the "fair use" doctrine diminishes its value for education under the present law.

The Register's Report proposes a statutory affirmation of "fair use" and indications of its scope; however, the preliminary draft still does not define "fair use", but merely lists four factors which shall be considered in its determination. Thus, the proposed change, does not afford educational broadcasting any substantially greater certainty of protection than the present dubious status of the "fair use" doctrine. \*

#### Actions by Educators

On July 23, the NEA convened a conference in Washington of representatives of forty-seven national organizations (including NAEB, NETRC) which have a stake in, and are vitally affected by, proposals for revision of the Copyright Law.

The group discussed the importance of working toward an expansion of education's rights under copyright law beyond the present limited and undefined pattern which now prevails and the need to support educational exemption to insure the full availability of copyrighted materials non-profit educational use by educational users.

Precedents cited for special consideration of education under law include:

1. Historically, there is a long series of exemptions for education in tax laws, postal laws, duty payments, etc.

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\* The preceding material is based upon a memorandum prepared for the NEA by Harry N. Rosenfield.

2. Special provision has been made by Congress for TV and FM channels for education's exclusive use and it enacted legislation providing 32 million dollars for expansion of ETV. Such legislation recognizes the special nature of educational television.

If educational radio and television is to live and grow, it must not be burdened with taxes, fees, and other costs accepted as routine costs in profit-making enterprises. Educational institutions must have maximum access to materials and resources with minimum restrictions under law; to impose commercial standards and restrictions upon educational use of materials by educational stations would severely limit their full use and development in the service of education, and by forcing them to produce their own materials place an intolerable burden upon limited staff and fiscal resources.

The NEA conference group passed a resolution expressing the vital concern of the participants in the proposed revisions, especially as they affect education as a producer and consumer of copyright materials.

At the suggestion of Larry Dennis (ACE and Chr. of JCEB) an ad hoc committee is being established between a number of organizations (including NAEB) in order to present a unified position for education before the Register of Copyrights. It will advise its constituent members of action which it feels should be taken by constituent groups and serve as a clearing house for relevant information.

The first meeting of this committee is set for September 5. This group will determine a course of action for education and spell out next steps.

NAEB will participate in this committee work and join in a united effort to marshal education's forces so as to have the fullest impact upon the Register of Copyright office.

In addition, NAEB will:

1. Prepare a detailed memorandum on the Copyright Law Revisions and their implications for educational broadcasting and distribute the memo to the membership.
2. Write a strong letter to the Register of Copyrights on behalf of the educational radio and television stations of the country and follow up with a personal conference.
3. Participate through counsel in all subsequent panel discussions.
4. Continue to alert our membership regarding the seriousness and urgency of the situation regarding the copyright law.
5. Gather information from members regarding the disruption to their operation and development which the proposed revisions would create. Such information will be made a part of a written statement to be transmitted to the Register of Copyrights and will be used subsequently in testimony in whatever hearings are scheduled on the bill.

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